



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

died a short time after he was last heard of, is sufficient to convince the courts of intestacy. The result, then, seems to be that the courts in fact give no weight to either of the presumptions as such, but apply the general rule that the title must be free from reasonable doubt, and to this end they require that the circumstances be such as to show beyond a reasonable doubt that the absentee has died intestate and without legal issue.

TITLE BY DEVOLUTION OF POSSESSORY RIGHTS. — That much of the learning concerning the history and development of our laws of property and much of the speculation upon the nature of title and possession are not only of interest to the antiquarian and the philosopher but are of practical value to the modern lawyer, is well illustrated by a recent article. *Title by Devolution of Possessory Rights*, Anon., 17 Madras L. J. 297 (August, 1907). The article is a review of the principles involved in a recent Indian decision¹ in which it was held — apparently for the first time — that the heir of a disseisor cannot recover possession from a trespasser who enters upon the land after the death of the ancestor and before the entry of the heir. This decision the author believes to be erroneous and contrary to the fundamental principles of English law. "Possession," he says, "is protected not merely as a fact, . . . or as an imperfect title in the course of ripening into ownership by the operation of the law of prescription, but as a substantive right or interest by itself." The ancestor in the present case, therefore, acquired a substantive right in the land which gave to his heir, without any possession of his own, a right good against all the world except the true owner.

In this conclusion the learned author seems eminently sound. The protection afforded the possession of a disseisor, even against the true owner, was fundamental in our law and forms a large chapter in its history.² This protection applied both to land and to chattels,³ and we can find traces of it in the doctrines of discontinuance and descent cast.⁴ A possession that was so protected was not merely a physical fact but a recognized legal right. This point was still more noticeable in dealings between third persons and the disseisor; for the latter had a right transferable, devisable, giving dower and curtesy, and subject to execution and escheat.⁵ Furthermore, his title was good against all but the disseisee, and when that one outstanding right became extinguished absolute ownership resulted. Hence the common law doctrine was a doctrine of relative ownership. If A, B, and C successively take X's land, C may be said to be the owner, subject only to the outstanding rights of A, B, and X. When those outstanding rights are extinguished, C becomes the absolute owner.

Modern cases accord with this conception of possession and title. The adverse possessor can maintain ejectment against all but the disseisee or any one claiming under him.⁶ One who has adverse possession for ten years acquires such an interest that when the sovereign takes the land by eminent domain, his executors may require the land to be valued with a view to compensation.⁷ It may be urged that in these cases the law gives a remedy in the nature of a tort action for interference with possession and not a proprietary remedy. As the author points out, if this were true, the heritable or devisable character of a possessory right, as shown in history, would be an illusion. For if the heir has entered into possession, all redress can be secured on the strength of that possession and no question of the heritable character of such right would ever arise. Has the common law changed today? The American cases which hold that the statute of limitations will not run against successive

¹ *Shi Gopal v. Ayesha Begam*, [1906] I. L. R. 29 All 52.

² Pollock and Maitland, *History of English Law*, B. II, c. IV.

³ 3 HARV. L. REV. 23.

⁴ 4 L. Quar. Rev. 286.

⁵ 2 L. Quar. Rev. 481, 488.

⁶ *Asher v. Whitlock*, L. R. 1 Q. B. 1.

⁷ *Perry v. Clissold*, [1907] A. C. 73. See 20 HARV. L. REV. 563.

adverse holders unless there is privity by sale, descent, or devise¹ would seem to rest more soundly upon the heritable and devisable character of the possessory right than upon a continuity of the mere fact of possession by privity of transfer or devolution, for unless in such a transaction there is an exchange of rights as well as a physical exchange, the privity would seem immaterial. Moreover, in the case of a mere holding, the personal relation of the holder to the *res* is certainly not heritable.²

-
- BANKRUPTCY LAW, THE MERITS AND DEMERITS OF THE. *George C. Holt*. 5 The Law 425.
- BOARD OF RAILWAY COMMISSIONERS FOR CANADA, THE WORK AND POWERS OF THE. *Robert C. Smith*. 20 Green Bag 30.
- CANADIAN CONSTITUTION, THE. *John S. Ewart*. Maintaining that Canada though in form a colony is in fact independent. 8 Colum. L. Rev. 27.
- CIVIL SERVICE LEGISLATION, CONSTITUTIONALITY OF. *Harold Harper*. 22 Pol. Sci. Quar. 630.
- COMMERCE, THE DEVELOPMENT OF THE FEDERAL POWER TO REGULATE. *Philoander C. Knox*. Contending that Congress cannot prohibit, for reasons unconnected with interstate commerce, the shipment of articles lawfully produced. 17 Yale L. J. 139.
- COMMON LAW, SHORT STUDIES IN THE. III. POSSESSION. *A. Inglis Clark*. Summarizing the elements of possession particularly with reference to criminal law. 5 Comm. L. Rev. 12.
- CONSTITUTION, THE ELASTICITY OF THE. *Ernest Bruncken*. Contending that the Constitution should be interpreted according to modern beliefs. 20 Green Bag 18.
- CONSTITUTIONAL ASPECT OF THE SENATORIAL DEBATE UPON THE RATE BILL, THE. *James Wallace Bryan*. A brief historical survey of railroad rate legislation and discussion in detail of the Hepburn-Dolliver Bill. 41 Am. L. Rev. 801.
- CORPORATIONS AND THE COMMERCE CLAUSE (Continued). *Smith W. Bennett*. Discussing the power of Congress to prevent state incorporation of interstate carriers. 35 Nat. Corp. Rep. 588.
- CORPORATE DIRECTOR, THE LIABILITY OF THE INACTIVE. *H. A. Cushing*. Maintaining that the standard of care imposed upon such directors does not sufficiently protect the investing public. 8 Colum. L. Rev. 18. See 19 HARV. L. REV. 613.
- DAMAGES IN THE PUBLICIZATION OF TURNPIKES. *Anon.* Discussing the proper method of valuation. 12 The Forum 67.
- DUE PROCESS OF LAW, CONCERNING UNCERTAINTY AND. *Theodore Schroeder*. Contending that we now enforce criminal statutes so uncertain in terms that the courts are forced to exercise legislative powers. 66 Cent. L. J. 2.
- EXECUTIVE AND LEGISLATIVE POWERS, VALIDITY OF STATUTES CONFERRING, ON COURTS AND JUDGES. *W. W. Thornton*. Digesting the cases. 66 Cent. L. J. 24. See 21 HARV. L. REV. 138.
- FEDERAL AND STATE CONSTITUTIONAL DOMAINS. *F. L. Stow*. Showing why the case of *McCulloch v. Maryland* does not apply in Australia. 5 Comm. L. Rev. 3. See 20 HARV. L. REV. 494.
- INSTRUMENTS, ALTERATION IN. *S. Vaidyanatha Iyer*. 6 Cal. L. J. 21n. See 7 HARV. L. REV. 1; 18 *ibid.* 105, 165.
- JUDGE-MADE LAW. *Anon.* Contesting the suggestion of Mr. Hornblower, 7 Colum. L. Rev. 453, that it is better not to codify the law. 35 Nat. Corp. Rep. 613.
- PRESUMPTION OF DEATH UPON MARKETABILITY OF TITLE TO REAL ESTATE, THE EFFECT OF. *W. F. Meier*. 19 Green Bag 713. See *supra*.
- PUBLIC PURPOSES FOR WHICH TAXATION IS JUSTIFIABLE. *Frederick N. Judson*. Showing the development and modern extension of the idea of what constitutes a public purpose. 17 Yale L. J. 162. See 21 HARV. L. REV. 276.
- RAILROAD VALUATION. *William Z. Ripley*. Discussing the methods of valuation in the light of modern legislation. 22 Pol. Sci. Quar. 577.
- ROMAN LAW AND MOHAMMEDAN JURISPRUDENCE. I, II. *Theodore P. Ion*. Comparing the two systems. 6 Mich. L. Rev. 44, 197.
- STATES, SUABILITY OF, BY INDIVIDUALS IN THE COURTS OF THE UNITED STATES. *Jacob Thieber*. Discussing how far state officers are suable. 41 Am. L. Rev. 845.

¹ *Sawyer v. Kendall*, 10 Cush. (Mass.) 241; *Jackson v. Leonard*, 9 Cow. (N. Y.) 653.

² 3 HARV. L. REV. 313, 315.

- TITLE BY DEVOLUTION OF POSSESSORY RIGHTS. *Anon.* 17 Madras L. J. 297. See *supra*.
- TRADE UNIONS, THE LEGAL STATUS OF, IN THE UNITED KINGDOM, WITH CONCLUSIONS APPLICABLE TO THE UNITED STATES. *Henry R. Seager*. Discussing both on authority and on principle the right to sue an unincorporated union. 22 Pol. Sci. Quar. 611.
- VENDOR AND PURCHASER. *Anon.* Maintaining that the vendor cannot sue before transfer is due for failure to pay advance instalments of the price. 27 Can. L. T. 725.

II. BOOK REVIEWS.

A SUPPLEMENT TO A TREATISE ON THE SYSTEM OF EVIDENCE IN TRIALS AT COMMON LAW. By John Henry Wigmore. Boston: Little, Brown and Company. 1907. pp. xiii, 459. 8vo.

In reviewing Wigmore on Evidence three years ago we said that use alone could be the final test of the value to the profession of such an original and monumental work (18 HARV. L. REV. 478). This test has already satisfied the profession of the permanent value of Professor Wigmore's work, which has become not merely the best but the only authority in general use in this country and in England. In our review of the original work we spoke of several valuable innovations in the art of law-book writing. This supplement is also such an innovation. The fact that in a little over three years two hundred and eighty-one large pages devoted almost entirely to notes should become necessary, shows the enormous importance of the subject and of the book, and indicates also the value of this new plan of issuing a supplementary volume to an original work.

In this supplement all the new cases during the last three years, amounting to about four thousand in number, and all the statutes passed in that time have been arranged in paragraphs under the original topic titles and with the original numbering. It is thus possible for one who is using Wigmore on Evidence, by a glance into the supplement, to add to the discussion contained in the original volumes all the new information which the author has to give as a result of later judicial discussion and legislative action.

Most of the matter in the supplement consists of additional notes. There are, however, in a few cases, new paragraphs added to the text. The longest and most important of these is section 2281a, entitled "Mode of Obtaining Immunity in Return for Self-Criminating Evidence." This section constitutes an addition of five pages to the former text. Another important new discussion is that upon the right to disprove the truth of a statement in a case where evidence has been offered simply to prove that the statement was made. This is new section 263. The point aroused great public interest when it was raised in the recent Thaw trial. The author's opinion is opposed to the ruling in the Thaw trial, although the weight of authority, as he states it, is very strongly against him.

In this supplement the author appears to have expressed his individual opinions with more force and freedom than he permitted himself in his original volumes. Compare, for instance, the picturesque language which he allows himself in commenting on recent decisions granting new trials for erroneous rulings on evidence—"The Saracenic invasion, led by Fanatic Technicality into the realms of Truth and Common Sense"—with his forceful but less imaginative language in section 21 of the first of the former volumes.

There is a new index, slightly longer than the earlier one, covering the four original volumes and the supplement.

J. H. B.

LAW: ITS ORIGIN, GROWTH, AND FUNCTION. By James Coolidge Carter. New York and London: G. P. Putnam's Sons. 1907. pp. vii, 355. 8vo. This volume contains thirteen lectures, which were prepared in order to be